

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Deangelo Bruce,

Case No. 1:10-cv-1784

Plaintiff

v.

ORDER

Terry Tibbals, Warden,

Defendant

This is a habeas corpus case in which a Magistrate Judge has filed a Report and Recommendation recommending that the petition be dismissed. (Doc. 11). The petitioner has filed an objection to the Report and Recommendation (Doc. 14), which now is before me for *de novo* review.

For the reasons that follow, I adopt the Report and Recommendation and dismiss the petition.

A jury of the Common Pleas Court of Cuyahoga County, Ohio, found the petitioner guilty of three counts of rape of a eighteen-year-old male and two counts of kidnapping. The trial judge found that the State had proven a sexually violent predator specification.

Following an unsuccessful appeal to the Eighth District Court of Appeals, the petitioner obtained leave to appeal to the Ohio Supreme Court. There he asserted three claims: 1) unconstitutionality of the violent offender specification; 2) the trial court was required to state its

findings explaining its sentence under the repeat violent offender specification; and 3) the indictment was defective because it failed to identify all the elements underpinning the specification.

The Ohio Supreme Court affirmed the petitioner's conviction. *State v. Bruce*, 123 Ohio St.3d 464 (2009).

In his *pro se* habeas petition, petitioner asserted two grounds: 1) "assistance of counsel" (*i.e.*, ineffective assistance of counsel); and 2) his state appellate court brief. The petitioner also sought appointment of counsel, which the Magistrate Judge denied.

With regard to the putative ineffective assistance of counsel claim, the Magistrate Judge found the claim was either procedurally defaulted and/or not exhausted.

To the extent that petitioner asserted some aspects of alleged ineffectiveness in the appellate court, he did not renew those assertions in his appeal to the Ohio Supreme Court. The Magistrate Judge held those portions of his ineffective assistance of counsel claims were procedurally defaulted.

As to any other claims of ineffectiveness, petitioner has not presented those claims to the Ohio courts for initial consideration and they are either unexhausted, or, as the Magistrate Judge found with regard to such claims *vis-a-vis* appellate counsel, defaulted.

The Magistrate Judge found that, with regard to claims preserved and exhausted *via* the appeal to the Ohio Supreme Court, each lacked merit.

With regard to petitioner's objections to the Report and Recommendation, the respondent correctly points out that, though styled "objections," his pleading in fact presents new arguments. He points to no error on the Magistrate Judge's part.

The petitioner's "objections" fail to raise any issues about the sufficiency of the Report and Recommendation. Accordingly, overruling his "objections," adopting the Report and

Recommendation and dismissing the petition are appropriate, as stated in *Hillman v. Beightler*, 2010 WL 2232635, *3 (N.D.Ohio):

A court is only required to conduct a de novo review of the portions of an R & R to which the parties have made an objection, and the parties have a “duty to pinpoint those portions of the magistrate's report that the district court must specially consider.” *Cincinnati Ins. Co. v. Grand Pointe, LLC*, 501 F.Supp.2d 1145, 1153 (E.D.Tenn.2007) (quoting *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. Ohio 1986)). In the absence of specific objections, a court may adopt conclusions reached by the Magistrate Judge without discussion.

I have, in any event, reviewed the Magistrate Judge’s Report and Recommendation *de novo* and find it to state the underlying facts and applicable law with accuracy and fidelity. Even had the petitioner made facially valid objections, they would not have had merit.

The “objections” not being properly framed nor otherwise well taken, it is hereby

ORDERED THAT:

1. The Magistrate Judge’s Report and Recommendation be, and the same hereby is, on *de novo* review, adopted; and
2. The petition for a writ of habeas corpus be, and the same hereby is denied and dismissed.
3. Further, the Court certifies, pursuant to 28 U.S.C. 1915(a)(3), that an appeal from this decision could not be taken in good faith.

So ordered.

/s/ James G. Carr
Sr. United States District Judge